

ARKANSAS SUPREME COURT

No. 07-943

DAVID EARL MARTIN
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered January 10, 2008

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [CIRCUIT
COURT OF JACKSON COUNTY, CV
2007-6, HON. HAROLD S. ERWIN,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

On January 5, 2007, while incarcerated in Jackson County, appellant David Earl Martin filed in the circuit court in that county a pro se petition for writ of habeas corpus, claiming that he had been sentenced illegally. The circuit court dismissed the petition, and appellant has lodged an appeal from that order in this court.

Appellant now seeks an extension of time to file his brief.¹ As appellant could not be successful on appeal, the appeal is dismissed and the motion is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

It is clear from the record that appellant was in custody in Jackson County when he filed the petition for writ of habeas corpus, but has since been transferred to the Cummins Unit in Lincoln

¹After appellant filed the motion, he timely filed the brief. As there is clearly no merit to the appeal, we nevertheless decline to permit the appeal to go forward.

County. We dismiss the appeal because the Circuit Court of Jackson County can no longer grant the relief sought by appellant.

Any petition for writ of habeas corpus to effect the release of a prisoner is properly addressed to the circuit court in the county in which the prisoner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001.² *Lukach v. State*, 369 Ark. 475, ___ S.W.3d ___ (2007) (per curiam). As a corollary to that limitation, a circuit court does not have jurisdiction to release a prisoner not in custody in that court's jurisdiction on a writ of habeas corpus. *Pardue, supra*, citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Here, appellant did not invoke Act 1780, and Jackson County Circuit Court does not have personal jurisdiction to release appellant who is held in another county. *Lukach, supra*.

Appeal dismissed; motion moot.

²Act 1780 of 2001, as amended by Act 2250 of 2005 and codified as Ark. Code Ann. §§ 16-112-201–16-112-208 (Repl. 2006), provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted.